

STATE OF MINNESOTA  
PUBLIC UTILITIES COMMISSION

121 7th Place East ■ Suite 350 ■ St. Paul, Minnesota 55101-2147

EX PARTE OR LATE FILED 612/296-7124  
(FAX) 612/297-7073  
(TDD) 612/297-1200

July 17, 1998

Docket # 96-45

Honorable William E. Kennard  
Chair, Federal Communications Commission  
Office of the Secretary  
1919 M Street N.W., Rm. 222  
Washington, D.C. 20554

RECEIVED

JUL 31 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Lifeline Support

Dear Chair Kennard:

This letter is sent on behalf of the Minnesota Public Utilities Commission (MPUC) and the Minnesota Department of Public Service (MDPS). We are writing to inform the Commission of developments in Minnesota relating to the Commission's Lifeline program, to set forth our understanding of the effect of the Commission's rules on low income customers in Minnesota, and to urge the Commission to approve the maximum baseline support for Minnesota's low income customers under the federal Lifeline program.

Background

Minnesota has had a state Lifeline program since 1987 called the Telephone Assistance Plan (TAP). State law has conditioned eligibility for TAP on age or disability criteria as well as income. *Minn. Stat. § 237.70, subd. 4a.*<sup>1</sup> Qualifying customers who have met these criteria have received \$3.50 per month in state TAP assistance, matched by an additional \$3.50 in federal Lifeline assistance. Minnesota currently has approximately 48,000 subscribers receiving assistance under TAP.

As you know, the Commission adopted rules on May 7, 1997, in Commission Docket 97-157, that made at least three significant changes to the federal Lifeline program. First, the rules increased the maximum federal matching support for state Lifeline assistance from \$3.50 to \$7.00. *47 C.F.R. § 54.403*. Second, the rules narrowed the range of state assistance programs that could qualify as state Lifeline programs under federal rules to those with eligibility criteria based solely on income. *47 C.F.R. §§ 54.409 (a) and 54.401 (a)*. This change affected Minnesota in that its TAP program no longer qualified as a state Lifeline program. Finally, and fortunately for states like Minnesota, the rules extended baseline federal Lifeline assistance to states without qualifying state Lifeline programs. *47 C.F.R. § 54.409 (b)*.

No. of Copies rec'd 2  
DATE

<sup>1</sup> To be eligible for TAP, a subscriber's household must (1) have a member who is either disabled or at least 65 years old; and (2) either have a household income no greater than 150% of federal poverty guidelines or be eligible for assistance under one of eight public assistance programs: (i) AFDC; (ii) Medical Assistance; (iii) General Assistance; (iv) Minnesota Supplemental Aid; (v) Food Stamps; (vi) Refugee Cash Assistance or Refugee Medical Assistance; (vii) Energy Assistance; or (viii) Supplemental Security Income.

The MPUC and MDPS recognized that the age and disability criteria in Minnesota's TAP statute conflicted with the Commission's revised eligibility rules for state Lifeline programs. Therefore, the MPUC sought a temporary Commission waiver of the new income-only eligibility requirement. The waiver request was intended to allow the state's TAP program to continue to operate as a qualifying state Lifeline program while the legislature considered revising the TAP program's eligibility criteria to conform to the new Commission rules.

On December 30, 1997, the Commission granted Minnesota's waiver request, which allowed Minnesota's TAP recipients to receive the maximum level of matching support from the federal Lifeline program under 47 C.F.R. § 54.409 (a), while the MPUC and Department pursued statutory changes to the TAP eligibility criteria. Under the waiver, Minnesota's TAP customers have received the maximum \$7.00 per month in federal Lifeline assistance as matching support for the \$3.50 in state TAP assistance. The Commission waiver expires August 1, 1998.

Regrettably, and despite our efforts, Minnesota's 1998 legislative session did not yield the desired changes to Minnesota's statutory eligibility criteria for TAP, which would have allowed the program to continue receiving matching assistance under the federal Lifeline Program.

#### Action By MPUC

As we stated in our waiver petition, the MPUC cannot alter the TAP program's eligibility criteria to make it qualify as a state Lifeline program, since those criteria are set by Minnesota statute. But the MPUC does have authority under state law to adopt the Commission's criteria in 47 C.F.R. § 54.409 (b).<sup>2</sup>

Under this authority, in its December 23, 1997 Order,<sup>3</sup> the MPUC directed all Eligible Telecommunications Carriers (ETCs) in Minnesota to take the steps necessary to enable low income customers to qualify for federal Lifeline assistance under 47 C.F.R. § 54.409 (b).<sup>4</sup> The Order also approved a \$1.75 reduction in intrastate rates as required to qualify for the maximum \$5.25 in baseline federal Lifeline support under 47 C.F.R. § 54.403 (a).<sup>5</sup>

---

<sup>2</sup> Minn. Stat. § § 237.011; 237.16, subd. 8 (a) (8); and 237.16, subd. 9.

<sup>3</sup> In the Matter of Request by Members of MIC for Designation as Eligible Telecommunications Carriers . . . , Docket No. P-551/M-96-135, ORDER DESIGNATING PETITIONERS AS ELIGIBLE TELECOMMUNICATIONS CARRIERS, ALLOWING TIME TO PROVIDE CERTAIN SERVICES, APPROVING RATE REDUCTION FOR QUALIFIED LOW INCOME CUSTOMERS AND REQUIRING FILINGS (December 23, 1997).

<sup>4</sup> The Commission may interpret the MPUC's December 23 Order in one of two ways. First, the Commission could view it as a declaration that Minnesota no longer has a qualifying state Lifeline program, in which case low income subscribers would receive baseline federal support under § 54.409 (b). Alternatively, the Commission may view it as the adoption of a qualifying state Lifeline program under § 54.409 (a).

<sup>5</sup> Id., p. 10. (47 C.F.R. § 54.403 (a) provides for \$3.50 in federal Lifeline support. But it allows an additional \$1.75 in support if the state commission approves an additional \$1.75 reduction in intrastate rates paid by the end-user).

The MPUC suspended its Order after receiving the Commission waiver on December 30, 1997, but reinstated the Order in June in light of the 1998 legislative session's failure to produce changes in TAP eligibility criteria.

### Application of Commission Rules

As a result of these events, we have concluded that, as of August 1, 1998, Minnesota's TAP recipients will no longer receive \$7.00 per month in federal matching support from the federal Lifeline Program under 47 C.F.R. § 54.409 (a).

Nevertheless, low income subscribers in Minnesota who satisfy the federal criteria in 47 C.F.R. § 54.409 (b) appear to be eligible to receive the maximum \$5.25 in baseline federal Lifeline support. These criteria allow low income customers to qualify for up to \$5.25 in monthly federal Lifeline support in states that do not provide support under qualifying state Lifeline programs.

Qualifying low income subscribers in Minnesota who certify their participation in one or more of the low income assistance programs identified in 47 C.F.R. § 54.409 (b) should receive \$5.25 per month in federal Lifeline support. Some of these subscribers may also receive \$3.50 in assistance under the state's TAP program, assuming they are either disabled or at least 65 years old. But we understand that these TAP subscribers will no longer receive the full \$7.00 federal Lifeline support under the Commission's matching formula in 47 C.F.R. § 54.403 (a).

Our interpretation is consistent with the plain language of 47 C.F.R. § 54.409 (b), which provides for baseline federal Lifeline support to subscribers in states without state Lifeline programs. It also comports with the Commission's intent to extend federal Lifeline assistance to all qualifying low income customers throughout the nation, even in states without state Lifeline programs. As the Commission stated in its May 7, 1997 Universal Service Order:

[W]e adopt the Joint Board's recommendations that Lifeline service should be provided to low-income consumers in every state, irrespective of whether the state provides matching funds.<sup>6</sup>

The MPUC and the MDPS will continue to work with the Minnesota legislature and the Commission to provide Minnesota's citizens with the full benefits of universal service support. In the meantime, the MPUC will implement its December 23, 1997 Order adopting the Commission's default criteria under 47 C.F.R. § 54.409 (b), which will allow low income Minnesotans to receive the maximum baseline federal Lifeline support.

The MPUC and the Department expect all ETCs in Minnesota to provide the Universal Service Administrator with the information required under 47 C.F.R. § 54.401 (d). This includes (1) a description of the carrier's Lifeline plan, demonstrating that it meets the criteria in 47 C.F.R. § 54.409 (b); (2) the estimated number of qualifying low-income consumers based on the number

---

<sup>6</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 97-157, REPORT AND ORDER (May 7, 1997), paragraph 326.

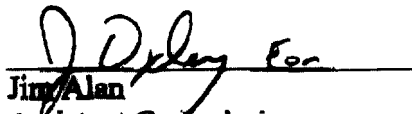
of Minnesotans who receive assistance under one of more of the programs identified in 47 C.F.R. § 54.409 (b); and (3) the amount of state Lifeline assistance, which will be zero, since Minnesota's TAP program no longer qualifies as a state Lifeline program.

Please let us know before August 1 if you have any concerns related to the our approach to federal Lifeline assistance as described in this letter. If you have any questions or would like to discuss this please feel free to contact us or the MPUC's counsel, Dan Lipschultz, at (651) 297-1852.

Sincerely,



Edward A. Garvey  
Chair  
Minnesota Public Utilities Commission  
(651) 296-2243



Jim Alan  
Assistant Commissioner  
Minnesota Department of Public Service  
(651) 297-4565

cc: Magalie Roman Salas  
Secretary, Federal Communications Commission

Kathryn C. Brown  
Chief, Common Carrier Bureau

Lisa Gelb  
Chief, Accounting Policy Division  
Commission Carrier Bureau

Lori Wright  
Accounting Policy Division  
Common Carrier Bureau

## **ADDITIONAL INFORMATION**

(FOR FURTHER INFORMATION, REFER TO THE SUPERVISORS' HANDBOOK ON ADMINISTERING LEAVE AND ALTERNATE WORK SCHEDULES AVAILABLE ON THE FCC INTRANET)

### **FAMILY AND MEDICAL LEAVE ACT**

An employee may use a maximum of 12 weeks leave without pay (annual or sick leave may be substituted) in any 12 month period under the Family and Medical Leave Act for the following reasons:

- A. the birth of a son or daughter and care of the newborn;
- B. the placement of a son or daughter with the employee for adoption or foster care;
- C. the care of a spouse, son, daughter, or parent with a serious health condition; or
- D. the employee's own serious health condition that renders the employee unable to perform one or more of the essential functions of the employee's position.

Additionally, and subject to work requirements and staffing needs, employees may request an extra 24 hours of unpaid leave for the following reasons:

- E. school and early childhood educational activities;
- F. routine family medical purposes; or
- G. elderly relatives' health or care needs.

For Leave Transfer Program recipients only.

### **ADVANCE ANNUAL LEAVE**

Advance annual leave is annual leave that is not yet earned. Advance annual leave can be used only if your annual leave is exhausted.

### **SICK LEAVE**

Sick leave may be used for the following purposes:

- A. medical, dental, or optical examination or treatment;
- B. incapacitation for the performance of duties by physical or mental illness, injury, pregnancy, or childbirth; or
- C. exposure to a communicable disease which may jeopardize the health of others by the employee's presence on the job.

### **FAMILY FRIENDLY LEAVE ACT**

The Family Friendly Leave Act authorizes the use of sick leave for the following purposes:

- A. adoption-related activities;
- B. care for a family member as a result of physical or mental illness, injury, pregnancy, childbirth, or medical, dental, or optical examination or treatment; or
- C. to make arrangements necessitated by the death of a family member or to attend the funeral of a family member.

Family Member is defined as a spouse, and his/her parents; children, including adopted children and their spouses; brothers and sisters, and their spouses; and any individual related by blood or affinity whose close association with the employee is the equivalent of a family member.

### **ADVANCE SICK LEAVE**

Sick leave may be advanced not to exceed 30 days in cases of serious injury or illness and when required by the exigencies of the situation. A request for advance sick leave must be submitted in writing and be accompanied by a medical certificate or other reasonable certification. Advance sick leave shall not be granted for:

- A. two consecutive days (16 hours) or less;
- B. slight indispositions, such as colds, other minor ailments, and minor infections; or
- C. chronic ailments which have necessitated absences in the past and which will probably necessitate future absences.

### **OTHER PAID ABSENCES**

PLEASE SPECIFY IN REMARKS SECTION. "Other Paid Absences" include, but are not limited to:

- |                          |                    |
|--------------------------|--------------------|
| A. Bone marrow donation; | D. Military leave; |
| B. Organ donation;       | E. Jury duty, or   |
| C. Blood donation;       | F. Voting.         |

Your signature is required on this form. A copied, facsimile, or e-mail version is not acceptable.

**INSTRUCTIONS FOR TIME AND ATTENDANCE CLERKS ONLY:** Time Off Award is to be recorded on the Time and Attendance Report under Transaction Code 66, Prefix 61. Leave taken under the Family Friendly Leave Act is to be recorded on the Time and Attendance Report under Transaction Code 62, Prefix Code 62.

### **PRIVACY ACT STATEMENT**

Section 552 of Title 5, United States Code, concerning collection of information. The primary use of this information is for management and then record of leave. Approve and record your use of leave. Potential disclosures of the information may be: To the Department of Labor when providing information for compensation regarding a job connected injury or illness; to a State employment compensation office regarding a claim; to Federal Life Insurance or Health Benefits centers regarding a claim; to a Federal, State, or local law enforcement agency when your agency becomes aware of a violation of Federal, State, or local law; to a Federal agency when conducting an investigation for employment or security reasons; to the Office of Personnel Management or the General Accounting Office when the information is required for evaluation of leave administration; or to the General Services Administration in connection with its responsibilities for records management.

If your agency uses the information furnished on this form for purposes other than those indicated above, it may provide you with an additional statement reflecting those purposes.

# REQUEST FOR LEAVE OR APPROVED ABSENCE

(FOR ADDITIONAL INFORMATION AND INSTRUCTIONS, SEE ENDNOTES ON REVERSE)  
(SEE PRIVACY ACT NOTICE ON REVERSE)

**1. NAME:** (Last, First, Middle Initial)

**2. ORGANIZATION:** (Bureau/Office, Division, Branch)

**3. TYPE OF LEAVE/ABSENCE:**  
(Check appropriate box(es) below.)

**DATE**  
From: To:

**TIME**  
From: To:

**TOTAL  
HOURS**

**4. FAMILY AND MEDICAL  
LEAVE:<sup>1</sup>**

- ☐ Annual Leave  
☐ Time Off Award  
☐ Donated Annual Leave<sup>2</sup>

☐ Restored Annual Leave

☐ Advance Annual Leave<sup>3</sup>

- ☐ Sick Leave<sup>4</sup>  
☐ Family Friendly Leave Act<sup>5</sup>

☐ Advance Sick Leave<sup>6</sup>

☐ Credit Hour(s)

☐ Compensatory Time Off

☐ Leave Without Pay

☐ Other Paid Absence<sup>7</sup>

Leave without pay, annual, or sick leave may be used under the Family and Medical Leave Act of 1993. Please provide the following information:

☐ I hereby invoke my entitlement to Family and Medical Leave for:

☐ Birth/Adoption/Postnatal Care

☐ Serious Health Condition of Spouse, Child, or Parent

☐ Serious Health Condition of Self

Contact your supervisor under the Labor Relations Act for more information. Employees covered by the Act may obtain additional information about your entitlement and responsibilities under the Family and Medical Leave Act of 1993.

**5. Remarks:**

**6. Certification:** I hereby request leave/approval absence from duty as indicated above and certify that such leave/absence is requested for the purpose(s) indicated. I understand that I must comply with my employing agency's procedures for requesting leave/approval absence (and provide additional documentation, including medical certification, if required) and that falsification on this form may be grounds for disciplinary action, including removal.

**EMPLOYEE SIGNATURE<sup>8</sup>**

**DATE**

**7. OFFICIAL ACTION ON REQUEST:** ☐ Approved ☐ Disapproved  
(If disapproved, give reason. If annual leave, initiate action to reschedule.)

**APPROVING OFFICIAL'S SIGNATURE**

**DATE**